IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1370 of 2005
With
CRIMINAL MISC.APPLICATION No. 7275 of 2005
In CRIMINAL APPEAL No. 1370 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH Sd/-

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

1 to 5 NO

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DEEPAKBHAI EKNATH YADAV - Appellant(s)

Versus

THE STATE OF GUJARAT - Opponent(s)

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Appearance :
MR ZUBIN F BHARDA for Appellant(s) : 1,
MR RC KODEKAR APP for Opponent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 21/10/2005

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.H.WAGHELA)

1. In this appeal, the appellant is charged with and convicted of the offences punishable under Sections 302, 506 (2) of the Indian Penal Code, 1860 and Section 135 of the Bombay Police Act. At the request of the learned counsel, the appeal was taken up for final hearing since the Record & Proceedings were already called for and the appellant proposed to press the appeal only for alteration of offence and reduction of sentence.

2. According to the case of the prosecution, on 30.10.2004 at 07.20 p.m., the appellant and his brother were quarrelling *inter se* on a public street when the victim, a woman aged 65, asked them why were they quarrelling there and asked them to go away from there. The appellant then brought an iron pipe from his house nearby and struck on the head of the victim with that pipe. The victim was at that time standing on the raised platform (otta) of her house with her husband who deposed as the eye witness. The victim fell down from the otta and slipped into coma and, after treatment for more than one month, she breathed her last on 5.12.2004 when she was shifted from one hospital to another. It is also the case of the prosecution that, when the relatives of the victim went after the appellant, they were also threatened by the accused. After detailed discussion of the evidence on record, the trial Court has held the death of the deceased to be culpable homicide amounting to murder as the act of beating a single blow of the pipe on the head of the deceased was held to be with the intention of causing such bodily

injury as was sufficient in the ordinary course of nature to cause death. The other offences punishable under section 135 of the Bombay Police Act and section 506 (2) of the Indian Penal Code were also held to have been proved. In view of the documentary evidence of expenses incurred during the prolonged treatment of the victim, the appellant is sentenced to suffer rigorous imprisonment for life and pay to the husband or son of the victim, by way of fine, a sum of Rs.50,000 and, in default, to suffer five more years of rigorous imprisonment.

3. In view of the voluminous evidence of the injury, prolonged treatment and the cause of death as also the eye witness account as deposed by the husband of the victim, the factum of the incident and involvement of the appellant are not seriously disputed for the appellant. However, learned counsel Mr.Z.F.Bharada, appearing for the appellant, vehemently argued against conviction and sentence under Sections 300 and 302 respectively of the Indian Penal Code in view of the admitted facts that there was no previous enmity or quarrel between the appellant and the victim, the injury was caused by a single blow of the pipe which is not a deadly weapon and in view of the possibility that the injury could have been aggravated when the victim had fallen down from the otta on which she was standing. It was argued that the version of the prosecution was *ex facie* unbelievable. He submitted that the appellant could, at the worst, have been punished under section

325 or 335 of the Indian Penal Code. Thus, the endeavour for the appellant was admittedly to reduce the term of sentence.

3.1 The learned counsel submitted that there was no reason and no material to believe that the victim was assaulted with the intention of causing such bodily injury as would be sufficient to cause death and even the knowledge that in all probability the bodily injury was likely to cause death could not be attributed to the appellant. He relied upon the judgment of this Court in ***Dilipbhai Madhubhai Patel v. State of Gujarat [2002 (3) G.L.R.2447]*** for the proposition contained therein that, where evidence establishes that the act by which the death was caused was done with the knowledge that the act was likely to cause death, the ingredients of clause (4) of Section 300 of the Indian Penal Code could be inferred. The knowledge of the offender is closely connected with the probable result of his act. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as would cause death. In the facts of that case, upon refusal by the deceased to give money, the appellant had picked up a kerosene lamp lying nearby and sprinkled some kerosene over the clothes of the deceased and ignited it. That was held to have been done simply in a fit of anger. Immediately on seeing

that the clothes had caught fire, the appellant had made all sincere efforts to prevent the deceased from receiving serous burns. In those facts, it was held that the knowledge to the appellant could be attributed only to the extent that he might have known that his act was likely to result into the death of the deceased, which brought the case under section 299 of the I.P.C. and was held to be punishable under section 304 Part.II of the I.P.C.

3.2 Another judgment of this Court in ***Bharatsinh Pratapsinh Parmar v. State of Gujarat [2005 (1) G.L.H.75]*** was relied upon for the proposition therein that, to gather the intention of the assailant, it is necessary to understand the nature of the weapon, the manner in which the injury was caused and the part of body to which injury was caused. Although stomach is also a vital part of the body, when there was no external mark of injury and the axe was not used in the manner in which it is normally used, it would reflect that the appellant did not entertain any intention to cause death of the person. Whatever blow was given on the stomach was with the blunt portion of the axe. Unfortunately that had resulted into rupture of the spleen. The Medical Officer had admitted that he had neither measured the size of the spleen nor had he taken the weight of the spleen which could have shown whether it was enlarged. It was held that benefit of doubt created thereby would certainly go to the appellant. It was found to be easy to infer that the appellant did not

entertain any intention to cause death or cause such bodily injury which could be sufficient in the ordinary course of nature to cause death. Accordingly, the case was held to be not falling under any of the clauses of section 300 of the I.P.C. and the act of the appellant was held to have been covered under clause (8) of section 320 of the I.P.C. punishable under section 326 of the I.P.C.

4. The learned A.P.P. supported the judgment with the argument that the assault on the old woman with a pipe and striking her on the head, a vital part of the body, were sufficient to infer the intention to kill and the offender, aged around 28, knew that the bodily injury caused by him was likely to cause the death of the person. He also pointed out from the deposition of the eye witness, Exh.14, that the appellant had gone to fetch the pipe from his house after being told to go away and, after bringing pipe, immediately assaulted the victim. On that basis, it is submitted that the intention of the appellant was clear and even if it were to be assumed that the pipe was intended for assaulting his quarrelling brother, the case would have been covered by section 301 of the IPC. In the alternative, he submitted that punishment could be imposed and sustained under Part I of Section 304 of the IPC since the intention of causing such bodily injury as was likely to cause death and the actual medical expenses were proved.

5. Although there is hardly any controversy

about the broad facts of the case, perusing the evidence recorded by the trial Court, it was seen that the neurosurgeon who first examined the victim on 30.10.2004 after being referred from Navsari hospital, has deposed at Exh.6 that the injury on the head of the victim was such as could be caused by the blow of a pipe or falling upon some hard and blunt substance and that the patient had *subarachnoid haematoma* in the left brain and after being operated, she was kept under his intensive care. However, on 5.11.2004, the relatives of the patient had taken the patient for further treatment to the Civil Hospital because of their economic condition. According to his opinion, the victim was not in such a condition that she could safely be removed from one place to another. The other doctor who received the victim immediately after the incident, has also deposed at Exh.9 that the external injury of contuse lacerated wound on the frontal part of the head of the victim and the *subarachnoid haematoma* found from the persual of C.T.Scan report was serious enough to cause death and such injury could be caused if a person falls on a hard and blunt substance. The son of the victim has deposed at Exh.12 that at the time of the incident, he was inside the house and many people had gathered at the scene of the offence which also included his brother. He has deposed that there was no previous enmity or quarrel between the appellant and his mother.

6. In the above facts and circumstances, the conclusion of an intention to cause death of the

victim by inflicting such injury as was likely to cause death appears to be far-fetched, but the appellant can be attributed only with the knowledge that he was likely to cause her death by inflicting a blow of the pipe on her head. As recently held by the Supreme Court in ***Ramu v. State of U.P. [AIR 2004 SC 1605]***, when the injury in question was caused during a melee, the act of the appellant in causing such injury to the deceased leading to his death cannot be the one which could be construed even as an act of culpable homicide not amounting to murder particularly when the appellant had no enmity against the deceased nor any motive to cause a fatal injury. In the facts of this case, however, it was not a melee but a quarrel between two brothers and the deceased appeared to have been hit on account of her intervention. In a number of cases decided by the Hon'ble Supreme Court, where there was no pre-meditation and in the course of a sudden quarrel on a trivial issue a young man had given only one blow to the deceased, section 300 was held to have no application and the conviction under section 302 has been altered to section 304 Part II as the convict could be imputed with the knowledge that he was likely to cause injury which was likely to cause death ***(Japtar AIR 1983 SC 463, Jawaharlal AIR 1983 SC 284, Shitel Singh AIR 1983 SC 652, Ranjit Singh 1994 Cr.L.J.1425 (SC), Joseph 1994 Cr.L.J.21 (SC) etc.]***. Therefore, we are inclined to accept the submission that the appellant was guilty of committing culpable homicide not amounting to murder by causing death by

an act with the knowledge that it was likely to cause death but without any intention to cause death, or to cause such bodily injury as was likely to cause death.

7. Since the conviction of the appellant has to be converted to one under Part II of Section 304 of the IPC, the order of sentence is also required to be modified. In view of the fact that the offences punishable under section 135 of the Bombay Police Act and Section 506 (2) of the IPC as also the expenses incurred during the prolonged treatment of the victim are proved and not under serious challenge, the order to pay the sum of Rs.50,000/- by way of fine is not required to be interfered with.

8. In the above facts, the appeal is partly allowed and the order of sentence of rigorous imprisonment is modified and reduced to simple imprisonment for five years and the order to suffer five more years of simple imprisonment in case of default in paying by way of fine the sum of Rs.50,000/- is altered to two more years of simple imprisonment in case of default in paying the fine. The Criminal Misc. Application does not survive and is disposed as rejected in view of this order.

Sd/- Sd/-

(M.S.SHAH,J.) (D.H.WAGHELA,J.)

(KMG Thilake)